

**MOUNTAIN VIEW ORCHARDS BLOCK 8, TRACT 22-A, AP (CARTER)  
TWO-LOT FIRST MINOR SUBDIVISION AND ONE VARIANCE REQUEST**

**STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS**

**CASE PLANNER:** Jennifer De Groot *JD*

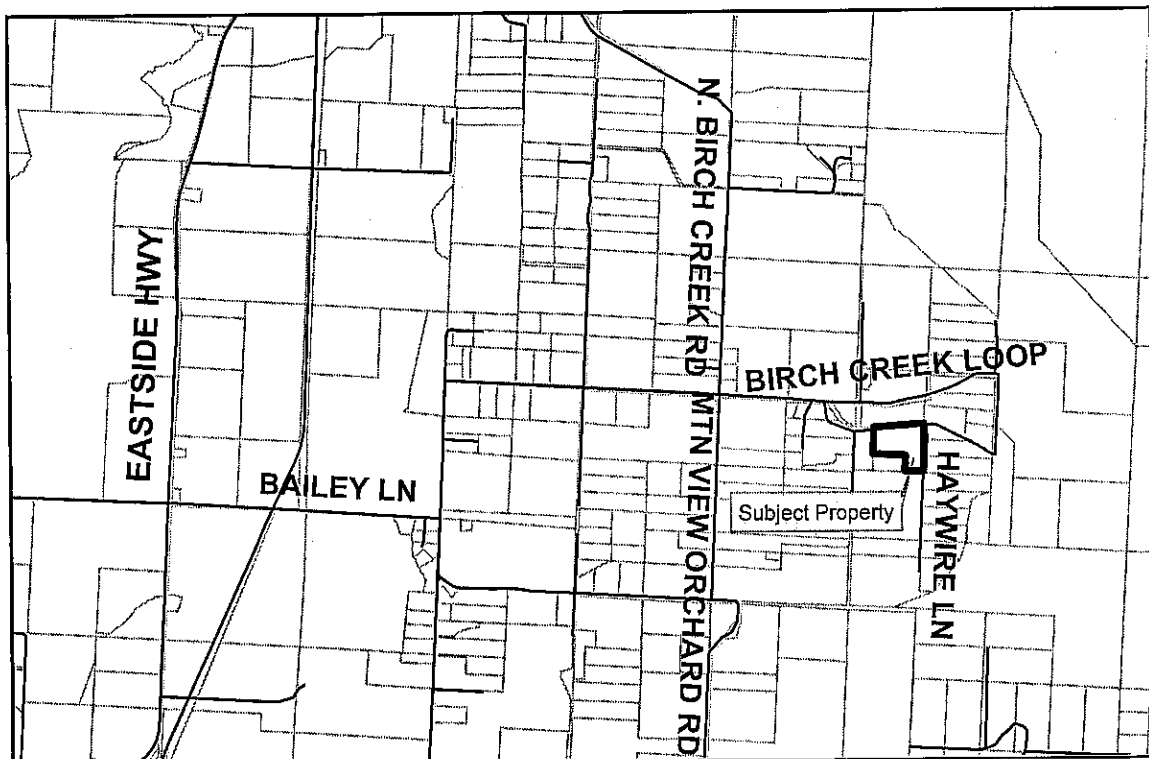
**REVIEWED/  
APPROVED BY:** Renee Van Hoven *RV*

**PUBLIC HEARINGS/  
MEETINGS:** BCC Public Meeting: 10:00 a.m. July 10, 2007  
Deadline for BCC action (35-working days): August 6, 2007

**SUBDIVIDER/OWNER:** Delbert Carter  
1995 Haywire Lane  
Corvallis, MT 59828

**REPRESENTATIVE:** Alcyon, LLC  
George Marshall  
P.O. Box 218  
Hamilton, MT 59840

**LOCATION OF REQUEST:** The property is located northeast of Corvallis off Haywire Lane. (See Map 1)



**Map 1: Location Map**  
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

Tract 22-A of AP# 535324 located in the SW ¼ of Section 12, T7N, R20W, P.M.M., Ravalli County, Montana.

**APPLICATION  
INFORMATION:**

The subdivision application was determined complete on June 15, 2007. Agencies were notified of the subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-9 of the staff report. **This subdivision is being reviewed under the subdivision regulations amended May 24, 2007.**

**LEGAL NOTIFICATION:**

Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked June 22, 2007. No public comments have been received to date.

**DEVELOPMENT  
PATTERN:**

Subject property	Large Lot Residential
North	Large Lot Residential
South	Large Lot Residential
East	Large Lot Residential
West	Large Lot Residential

**INTRODUCTION**

The Mountain View Orchards, Block 8, Tract 22-A, AP Minor subdivision is a two-lot subdivision of 15.66 acres located northeast of Corvallis. There is an existing home on Tract 22-A1. Birch Creek, a perennial stream, flows through proposed Tract 22-A1. The subdivider is proposing a no-build/alteration zone extending 50-feet from each side of the ordinary high water mark of the creek. Concurrent with the subdivision proposal, the subdivider is requesting one variance from Section 5-4-5 (a) of the Ravalli County Subdivision Regulations, which would require the subdivider to construct the privately-maintained Haywire Lane to County standards, which would include paving.

*Staff recommends conditional approval of the variance request and subdivision proposal.*

**RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS**  
**JULY 10, 2007**

**MOUNTAIN VIEW ORCHARDS BLOCK 8, TRACT 22-A, AP**  
**TWO-LOT MAJOR SUBDIVISION AND ONE VARIANCE REQUEST**

**RECOMMENDED MOTIONS**

1. That the variance request from Section 5-4-5 (a) of the Ravalli County Subdivision Regulations to allow the subdivider relief from upgrading Haywire Lane to County standards be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
2. That the Mountain View Orchards Block 8, Tract 22-A, AP Major Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Notification of Proximity to Agricultural Operations.*** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

***Limitation of Access onto a Public Road.*** A "no-ingress/egress" restriction exists along the Birch Creek Loop Road frontage of this subdivision, excepting the existing agricultural approaches to Tract 22-A1. The accesses off Birch Creek Loop shall only be used for agricultural purposes. All lots within this subdivision must have primary access off Haywire Lane. This limitation of access may be lifted or amended only with the approval of the Board of County Commissioners. *(Effects on Public Health and Safety)*

***Notification of Road Maintenance Agreement.*** Haywire Lane is not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A Road Maintenance Agreement for this road was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. *(Effects on Local Services)*

***Notification of Irrigation Facilities and Easements.*** Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The filed subdivision plat shows the irrigation easements on the property. The Bitter Root Irrigation District must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders and those acting with the approval of the Bitter Root Irrigation District have the right to use the easements to maintain the ditches. Please contact the Bitter Root Irrigation District, 1182 Lazy J Lane, Corvallis, Montana, 59828, 961-1182 for more information. *(Effects on Agricultural Water User Facilities)*

**Notification of "Very Limited" Soils.** Within this subdivision there are areas of the property identified by the Natural Resources Conservation Service (NRCS) as potentially having soils rated as "very limited" for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat. Descriptions of the severe soils in question are included as exhibits to this document. *(Effects on Public Health & Safety)*

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

**Waiver of Protest to Creation of RSID/SID.** Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*

**Living with Wildlife.** (See Exhibit A-1 for required provisions.) *(Effects on Agriculture and Wildlife & Wildlife Habitat)*

**No-Build/Alteration Zone.** There is a no-build/alteration zone located on Tract 22-A1, as shown on the plat, to restrict building or alteration in the area around Birch Creek. No new building or structure may be constructed or otherwise placed and no road or utility crossing is permitted and the vegetation shall be retained in its natural condition, with the exception of necessary weed control, development of native vegetation, or the installation of irrigation infrastructure to mitigate the impacts of livestock grazing near Birch Creek. No fill is permitted to be placed within the no-build/alteration zone. Fences are allowed. *(Effects on Agricultural Water User Facilities and Natural Environment)* (See Exhibit A-1 for detailed guidance on protecting the riparian buffer from FWP.) *(Effects on Natural Environment)*

**Lighting for New Construction.** To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit [www.darksky.org](http://www.darksky.org). *(Effects on Natural Environment, Wildlife & Wildlife Habitat, and Public Health & Safety)*

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. *(Effects on Public Health & Safety)*

**Control of Noxious Weeds.** A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. *(Effects on Agriculture and Natural Environment)*

**Required Posting of County-Issued Addresses for Lots within this Subdivision.** The Corvallis Rural Fire District has adopted the Uniform Fire Code which requires lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. *(Effects on Local Services and Public Health & Safety)*

**Access Requirements for Lots within this Subdivision.** The Corvallis Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information. *(Effects on Local Services and Public Health & Safety)*

**Amendment.** Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the subdividers shall provide a letter from the Corvallis Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services and Public Health & Safety)*
6. The subdivider shall submit a letter or receipt from the Corvallis School District stating that they have received a voluntary contribution prior to final plat approval. *(Effects on Local Services)*
7. The final plat shall show a no-ingress/egress zone along the Birch Creek Loop frontage of the subdivision, excepting the approaches for the existing agricultural accesses. *(Effects on Public Health and Safety)*
8. All existing and proposed irrigation easements shall be shown on the final plat as they were shown on the preliminary plat. *(Effects on Agricultural Water User Facilities)*

9. The Road Maintenance Agreement for Haywire Lane shall state that other parcels that may have beneficial use of this road shall be allowed to join as members of the agreement without the consent of the current members. (*Effects on Local Services*)
10. A no-build/alteration zone extending 50 feet from each side of the ordinary high water mark of Birch Creek shall be shown on the final plat. (*Effects on the Natural Environment*)
11. The subdivider shall sign an affidavit acknowledging that there is a 60-foot public road easement on Birch Creek Loop and that prior to any sale or transfer of Tract 22-A1, the pole barn shall be removed from the public easement. (*Effects on Local Services*)
12. The subdivider shall provide evidence with the final plat submittal that dust abatement has been applied to Haywire Lane from its intersection with Birch Creek Loop to the end of Tract 22-A2. (*Effects on Natural Environment and Variance*)

## **SUBDIVISION REPORT**

### **COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA**

#### **CRITERION 1: EFFECTS ON AGRICULTURE**

##### **Findings of Fact:**

1. According to the Montana Cadastral Database published by the Montana State Library and based on the Department of Revenue's Computer Assisted Mass Appraisal (CAMA) database, the property is located in an area of residential and agricultural land uses. To mitigate impacts on agriculture, a notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (*Conditions 1 and 2*)
2. The *Web Soil Survey* published by the United States Department of Agriculture Natural Resources Conservation Service identifies soil types listed as Farmland of Statewide Importance and Farmland of Local Importance. Approximately 75% of the property may have Farmland of Importance.
3. Based on the noxious weed evaluation form submitted with the preliminary plat application, the property has Canada Thistle and Spotted Knapweed. Section 3-4-4(a)(xi) requires the applicant to submit a Ground Disturbance and Noxious Weed Management Plan approved the Ravalli County Weed District. To further mitigate impacts on surrounding agriculture, a provision in the covenants shall require future lot owners to control weeds in conjunction with the filed plan. (*Condition 2*)
4. There is currently one residence, one garage, two barns, sheds, and corrals on the property. The subdivider has been using the property for his residence and horse pasture. He is proposing to continue to use Tract 22-A1 in the same manner.

##### **Conclusions of Law:**

1. With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on surrounding agriculture will be reduced.
2. This property appears to have productive agricultural soils, but has not recently been farmed and the current owner is not proposing to use the land for agriculture. The proposal is to split approximately 2.40 acres off the original 15.66-acre property. The proposal does not discourage a future lot owner from using the 13.22-acre parcel, Tract 22-A1, for agriculture in the future.

#### **CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

##### **Findings of Fact**

1. The application states that 10 irrigated-acres of water are provided to the property by the Bitter Root Irrigation District (BRID). An underground gravity-fed sprinkler line provides water to the property. BRID has approved the reallocation of water in an agreement dated November 6, 2006, so that Tract 22-A1 is allotted nine irrigated-acres and Tract 22-A2 is allotted one irrigated-acre. (*Application*)
2. The subdivider has surface water rights from Birch Creek in addition to the water rights discussed above. According to the DNRC general abstract on these water rights, this water is used for stock, flood irrigation, and sprinkler irrigation. The subdivider is proposing to keep these water rights with Tract 22-A1. (*Application*) (*Exhibit A-2*)
3. Based on a 2004 aerial photograph and comments from FWP, a portion of Birch Creek on the property appears to have been disturbed by livestock grazing. Based on a conversation with the subdivider's representative, the subdivider would like to install irrigation infrastructure in the future to mitigate impacts from livestock on Birch Creek. The subdivider is proposing a 50-foot no-build/alteration zone on either side of Birch Creek and has requested that this zone allow

for the installation of irrigation infrastructure. To mitigate impacts on agricultural water user facilities and the natural environment, the no-build/alteration zone on Birch Creek shall allow for the installation of irrigation facilities. (*Condition 1*)

4. The subdivider is proposing a 10-foot wide irrigation easement along the underground gravity-fed sprinkler line traversing the southern boundary of Tract 22-A1. This line will provide water rights from BRID to both lots in the proposed subdivision. To mitigate impacts on agricultural water user facilities, the irrigation easement shall be shown on the final plat as shown on the preliminary plat. (*Condition 8*)
5. Section 3-4-4(a)(xx) requires that notarized documentation showing how the water rights are to be divided are submitted with the final plat application. Section 3-4-4(a)(xxi) requires a notarized statement from BRID approving of the irrigation alterations with the final plat application. Section 3-4-4(a)(xxvi) requires evidence that alterations or installation of irrigation infrastructure has been completed is submitted with the final plat application.
6. To notify future property owners of the irrigation rights associated with this property and the role of the Irrigation District and to mitigate potential impacts on agricultural water user facilities, a notification of the irrigation facilities and easements shall be filed with the final plat. (*Condition 1*)

#### Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on agricultural water user facilities will be reduced.

### **CRITERION 3: EFFECTS ON LOCAL SERVICES**

#### Findings of Fact:

1. Bailey Lane and Birch Creek Loop, County-maintained roads providing access to the subdivision, do not meet County standards. Per Section 5-4-5(d), the subdivider is required to pay the pro rata share of the cost to improve the portions of these roads providing access to the subdivision to meet County standards.
2. Haywire Lane, a privately-maintained road providing access to the two lots within the subdivision and sixteen additional lots outside of the proposed subdivision, does not meet County standards. Per Section 5-4-5(a), the subdivider is required to improve the section of Haywire Lane leading to the subdivision. The subdivider has requested a variance from improving Haywire Lane to meet County standards and Staff is recommending conditional approval of the variance request. (See Variance Request)
3. There is one existing residential home on Tract 22-A1 and one single-family residential home is proposed on Tract 22-A2. It is estimated that this subdivision will generate an additional 8 trips per day for the new single-family dwelling.
4. There does not appear to be an existing road maintenance agreement for Haywire Lane. A preliminary road maintenance agreement for Haywire Lane was included in the application packet that would only apply to the two lots in this subdivision. Per Section 3-4-4(a)(xix), the final plat application packet is required to include a road maintenance agreement that meets the requirements of the Ravalli County Subdivision Regulations (See Section 3-1-5(a)(xxxviii) for the required provisions). To mitigate impacts on local services, the road maintenance agreement shall also state that other parcels that may have beneficial use of Haywire Lane may join as members of the road maintenance agreement without the consent of the current members. A notification of the road maintenance agreement shall be included in the notifications document filed with the final plat. (*Conditions 1 and 9*)
5. Birch Creek Loop is a public road and utility easement maintained by the County. A 60-foot easement for Birch Creek Loop is shown on COS 2012, which was filed in 1979. According to the applicant, a formal 60-foot easement for Birch Creek Loop was created through AP 1007, which was filed by the subdivider in 1999. A pole barn owned by the subdivider is located approximately two-thirds within the road easement for Birch Creek Loop, along the



northwestern portion of Tract 22-A1. According to the subdivider's consultant, the pole barn existed prior to the subdivider's purchase of the land in 1968. (*Exhibit A-3*)

6. The County Attorney's Office reviewed the easement issue and recommended that the applicant be allowed to keep the barn until the time that the property is sold. The barn should be removed from the public road easement prior to sale. To mitigate impacts of this subdivision on local services, specifically the public road system, the subdivider shall sign an affidavit indicating he is aware of the existing 60-foot wide public road easement on Birch Creek Loop and that prior to a sale or transfer of Tract 22-A1, the barn shall be removed from the public easement. (*Condition 11*)
7. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (*Conditions 2 and 3*)
8. Bitterroot Disposal provides service to this site.
9. The Ravalli County Sheriff's Office provides law enforcement services to this area and has not specifically commented on the impacts of this subdivision.
10. Individual wells and wastewater treatment systems are proposed to serve the lots. (See Effects on Natural Environment)
11. The subdivision is located within the Corvallis Rural Fire District. The Corvallis Rural Fire District has provided comments on previous subdivision proposals indicating they have adopted a policy which addresses access, posting of addresses, and water supply requirements. To mitigate impacts on local services, the subdivider shall meet the water supply requirements for the Corvallis Rural Fire District, which is a 1,000 gallon per minute water supply or a 2,500 gallon per lot water storage. Alternatively, the subdivider can contribute \$500 per lot and provide a letter from the Corvallis Rural Fire District that the contribution has been made prior to final plat approval. Conditions of approval will meet the recommendations of the Corvallis Rural Fire District. (*Exhibit A-4*) (*Conditions 2, 4, and 5*)
12. To mitigate impacts on local services, the subdivider shall apply for County-issued addresses. A provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (*Conditions 2 and 4*)
13. This subdivision is exempt from a park dedication/donation because it is a minor subdivision in which only one additional parcel is created. (See Section 6-1-5(b)(1))
14. With this subdivision, it is estimated that approximately .5 school-aged children will be added to the Corvallis School District, assuming an average of .5 children per single-family residence (Source: Census 2000).
15. The Corvallis School District was notified of the subdivision proposal. In a letter dated February 2, 2007, the School District stated that it has no specific objection to the subdivision, but noted that an increase in students continues to affect their infrastructure. The subdivider is proposing to contribute a voluntary donation of \$250-per-lot to the school district. A condition that the subdivider provides evidence of a contribution to the School District is required prior to final plat approval. (*Condition 6*) (*Exhibit A-5*)

#### Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

#### **CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT**

##### Findings of Fact:

1. The subdivision is accessed off of Haywire Lane and Birch Creek Loop, which are both gravel roads. Letters from the Ravalli County Board of Health address concerns associated with the impacts of road dust on public health and air quality (*Exhibits A-6 and A-7*). Per Section 5-4-5(d), the applicant is required to pay the pro rata share of the cost to improve Birch Creek Loop prior to final plat approval. To mitigate impacts on air quality, the applicant shall apply dust abatement to the portion of Haywire Lane leading to the subdivision prior to final plat approval.

(Condition 12)

2. According to the application, Tract 22-A1 is exempt from sanitation review by DEQ since it has an existing wastewater treatment system constructed prior to April 29, 1993. As a requirement of final plat approval, the subdivider shall provide evidence that this exemption was granted. In the event that an exemption is not granted, the subdivider shall provide a Certificate of Subdivision Plat Approval from DEQ. (Application)
3. An individual well and wastewater treatment system is proposed to serve Tract 22-A2. A Certificate of Subdivision Plat Approval from Montana Department of Environmental Quality (DEQ) is required to be submitted with the final plat.
4. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-8)
5. Birch Creek traverses the northern portion of Tract 22-A1 of this subdivision. The subdivider was not required to submit a floodplain analysis since the creek drains an area smaller than 15 square miles. Montana Fish, Wildlife, & Parks noted the damage that has been caused to the Creek by livestock grazing and recommended that the subdivider provide a 25 or 50-foot no-build/alteration zone from the ordinary high water mark of Birch Creek. FWP has also recommended specific restrictions and guidance for the no-build/alteration zone. In light of this recommendation, the subdivider has proposed a 50-foot no-build/alteration zone from the high water mark of both sides of Birch Creek. (Application)
6. To mitigate impacts on the natural environment, a no-build/alteration zone 50 feet from the ordinary high water mark of both sides of Birch Creek shall be shown on the final plat and the Riparian Buffer Zone covenants shall be included in the covenants filed with the final plat. (Exhibit A-1) (Conditions 2 and 10)
7. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)
8. The applicant has submitted a noxious weed evaluation form to the Ravalli County Weed District. An approved noxious weed and vegetation control plan is required to be filed with the final plat. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)
9. The Montana Natural Heritage Program has identified two mosses, *Bryum dichotomum* and *Pseudocrossidium obtusulum*, that are sensitive species and are located in the same section as the subdivision. Due to lack of suitable habitat for these mosses within the subdivision, a sensitive species waiver was requested and granted by the Planning Director. (Application)

#### Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

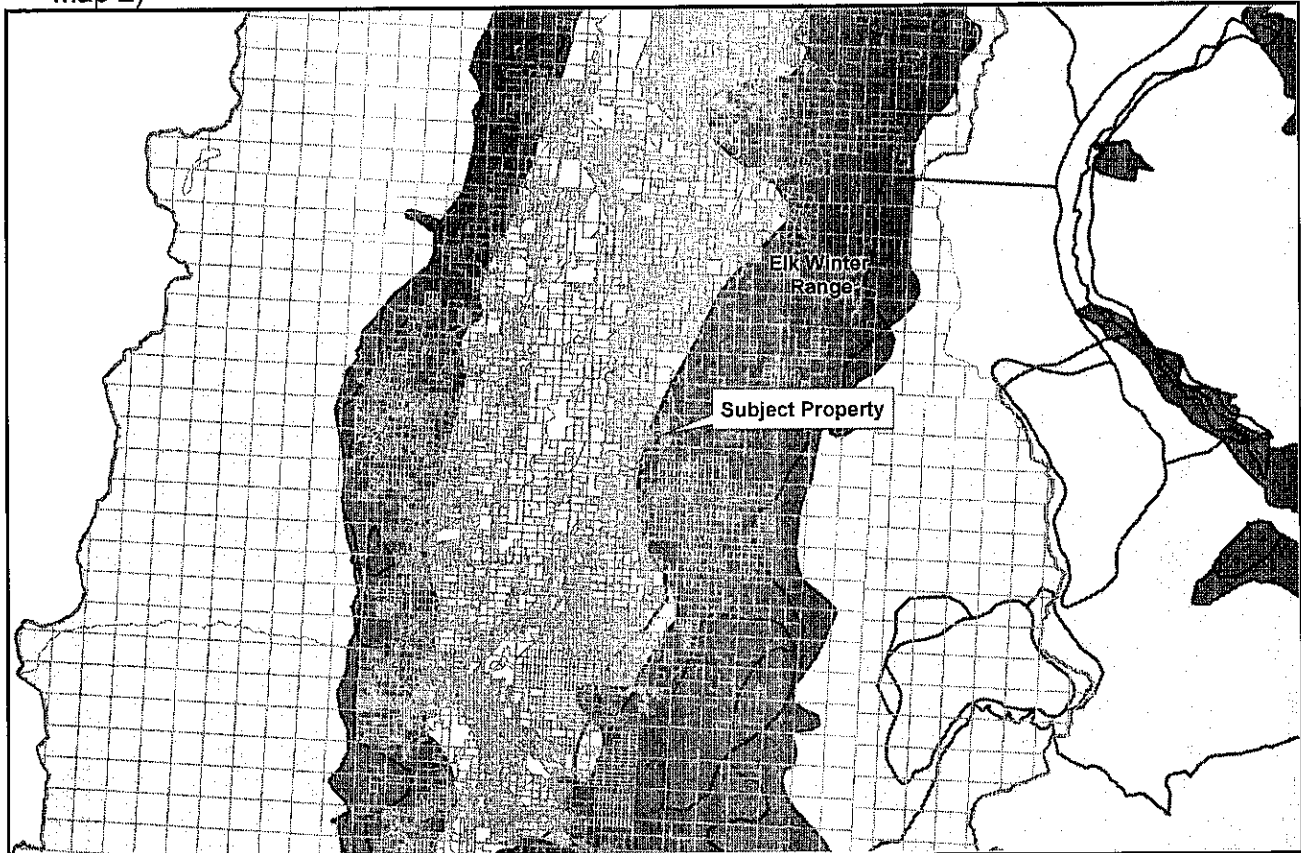
#### **CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT**

##### Findings of Fact:

1. A letter from Montana Fish, Wildlife, and Parks (FWP) recommends that the Living with Wildlife provisions be included with the covenants for this subdivision. (Exhibit A-1) (Condition 2)
2. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)
3. According to Montana Fish, Wildlife and Parks data, the property is located within Elk Winter

Range.

4. Map 2 shows Elk Winter Range boundaries in relation to the subdivision. The data was created by FWP and the Rocky Mountain Elk Foundation at a scale of 1:250,000 and cannot be used at a larger scale. At this scale, it appears that all of the subdivision is within Elk Winter Range. However, the boundary is coarse and should only be used for general planning purposes. (See Map 2)



**Map 2: Elk Winter Range Boundaries**

(Source Data: Montana Fish, Wildlife, and Parks and Rocky Mountain Elk Foundation)

5. According to the Montana Natural Heritage Program, the Bobolink and Townsend's Big-Eared Bat are located in the same section as the proposal. Due to lack of suitable habitat for these species, the subdivider requested and received a waiver from the requirement to submit a sensitive species report. (*Application*)

#### Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on Wildlife & Wildlife Habitat will be reduced.

#### **CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY**

##### Findings of Fact:

1. The applicant is proposing to use the existing loop driveway off Haywire Lane for Tract 22-A1 and a new access off Haywire Lane for Tract 22-A1. There are three existing accesses off Birch Creek Loop that the applicant has used to access his horse barns, sheds, and corrals. To mitigate impacts on the local road system, the final plat shall show a no-ingress/egress zone along the Birch Creek Loop frontage of the subdivision, excepting the existing agricultural accesses. These accesses shall only be used for agricultural purposes. A notification of this limitation of access shall be included in the notifications document. (*Conditions 1 and 7*)

2. The Sheriff's Office, Fire District, and Marcus Daly Hospital EMS Department were all contacted for comments on the impacts of this subdivision on public health and safety. No comments were received.
3. According to the application, Tract 22-A1 is exempt from sanitation review by DEQ since it has an existing wastewater treatment system constructed prior to April 29, 1993. As a requirement of final plat approval, the subdivider shall provide evidence that this exemption was granted. In the event that an exemption is not granted, the subdivider shall provide a Certificate of Subdivision Plat Approval from DEQ. (*Application*)
4. An individual well and wastewater treatment system is proposed to serve Tract 22-A2. A Certificate of Subdivision Plat Approval from Montana Department of Environmental Quality (DEQ) is required to be submitted with the final plat.
5. Per Section 3-5-1(a)(xl), a floodplain analysis for Birch Creek was not required.
6. The preliminary plat and soils map indicate that the subdivision may have soils rated as very limited for road and building construction. Soil type 24B, as identified by the NRCS, is rated "very limited" for dwelling structures due to flooding and is most likely associated with the potential flooding of Birch Creek. To educate property owners and to mitigate potential impacts of this subdivision on public health & safety, a notification of the potential for very limited soils shall be included in the notifications document filed with the final plat. A reduced plat showing the approximate locations of soils rated as very limited for roads and building construction and descriptions of the very limited soils in question shall be attached to the notifications document as an exhibit. (*Condition 1*)
7. To mitigate impacts on Public Health & Safety, the subdivider shall apply for County-issued addresses and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (*Conditions 2 and 4*)
8. The proposed subdivision is located within the Corvallis Rural Fire District. Conditions 2 and 5 address impacts to the District.
9. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (*Condition 2*)
10. There is a prevalence of radon in the County and to mitigate impacts on Public Health & Safety, the covenants shall include a statement regarding radon exposure. (*Condition 2*)

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety.

**COMPLIANCE WITH:**

**1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.**

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements, or conditions have been required to bring the proposal into compliance.

**2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.**

Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The subdivider has submitted a plan that complies with the requirements of local subdivision regulations, or conditions have been required that will bring the plan into compliance.

### **3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS**

#### **Findings of Fact:**

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, or a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

#### **Conclusion of Law:**

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

### **CONSISTENCY WITH EXISTING ZONING AND COVENANTS**

#### **Findings of Fact:**

1. There are existing restrictive covenants on the property. They limit the original parcel (Tract 22A) to be split only once.
2. This property is not located within a voluntary zoning district.
3. Minimum lot size is 2.43 acres. The proposal complies with the interim County-wide zoning regulations.

#### **Conclusion of Law:**

The property appears to comply with existing covenants and zoning.

### **PROVISION OF EASEMENTS FOR UTILITIES**

#### **Findings of Fact:**

1. The preliminary plat indicates that existing utility easements are located along Birch Creek Loop and Haywire Lane.
2. According to the application, the proposed subdivision will be served by Ravalli Electric Co-operative and Qwest Communications. Utility companies have been notified of the proposed subdivision. No comments have been received to date.
3. Utility certificates are a requirement of final plat approval.
4. Utility easements are required to be shown on the final plat.

#### **Conclusion of Law:**

Utility services are available to the subdivision.

**PROVISION OF LEGAL AND PHYSICAL ACCESS**

**Findings of Fact:**

1. Physical and legal access for this subdivision is proposed via Bailey Lane, Birch Creek Loop, and Haywire Lane. The lots will access off Haywire Lane with individual driveways. (*Local Services*)
2. Both Bailey Lane and Birch Creek Loop are listed in Exhibit A of the Ravalli County Subdivision Regulations.
3. An easement agreement filed in 1998 shows that the subject property has access off Haywire Lane.(Application)

**Conclusion of Law:**

With the conditions of approval and requirements of final plat approval, the proposal meets physical and legal access requirements.

## VARIANCE REPORT

### VARIANCE REQUEST

According to Section 5-4-5(a) of the Ravalli County Subdivision Regulations, all roads providing primary access to the subdivision shall meet or exceed road standards listed in the regulations. Haywire Lane is a private road providing primary access to this subdivision. The subdivider has requested a variance from Section 5-4-5(a) of the Ravalli County Subdivision Regulations to allow the subdivider relief from upgrading Haywire Lane to County standards. No improvements are proposed.

### Compliance with Review Criteria

#### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### Findings of Fact:

1. Haywire Lane is an existing private road that averages 18-feet wide and has a gravel surface. (*Application*)
2. Birch Creek Loop, an adjacent County-maintained road, is within a 60-foot public road and utility easement and has a gravel surface.
3. This subdivision has the potential to add eight trips per day to Haywire Lane.
4. In an email dated March 15, 2007, David Ohnstad states that because Haywire Lane leads to Birch Creek Loop, a County-maintained gravel road, and the proposal will add an insignificant amount of traffic, the Road Department does not object to the granting of the variance. (*Exhibit A-9*)
5. Letters from the Ravalli County Board of Health address concerns associated with the impacts of road dust on public health (*Exhibits A-6 and A-7*). To mitigate impacts to air quality, the applicant shall apply dust abatement to the portion of Haywire Lane leading to the subdivision prior to final plat approval. (*Condition 12*)

##### Conclusions of Law:

1. The impacts of eight additional trips to Haywire Lane will not be substantially detrimental to public health and safety.
2. Dust abatement on Haywire Lane will reduce dust generated from the additional trips.

#### **B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

##### Finding of Fact

The applicant is required to hard surface a private road leading to a gravel County-maintained road.

##### Conclusion of Law:

The conditions upon which the variance is proposed appear to be somewhat unique to the property.

#### **C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

##### Finding of Fact:

Physical conditions of the property do not affect the ability of the subdivider to upgrade Haywire Lane to County standards.

##### Conclusion of Law:

The condition upon which the variance is proposed is not affected by physical conditions.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. This property is not located within a voluntary zoning district.
2. This proposal complies with the interim zoning regulations requiring one dwelling structure per two acres.
3. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 3:** Protect air quality.

**Countywide Policy 3.2:** Continue to minimize dust and other air pollution by appropriate subdivision regulation.

- To mitigate impacts on air quality, the applicant shall apply dust abatement to the portion of Haywire Lane leading to the subdivision prior to final plat approval. (*Condition 12*)

Conclusions of Law:

1. Provisions in the zoning standards do not apply.
2. With the mitigating condition of approval, the request does not appear to vary from the provisions in the Growth Policy.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. The road will be privately-maintained by individual lot owners until such time as the County elects to assume maintenance responsibilities.
2. The proposal will add eight additional trips to Haywire Lane.

Conclusion of Law:

The granting of the variance will not cause a substantial increase in public costs.





## Montana Wildlife & Parks

EXHIBIT A-1

Region 2 Office  
3201 Spurgin Road  
Missoula, MT 59804-3101  
406-542-5500  
Fax 406-542-5529  
January 8, 2007

George Marshall  
Alcyon, LLC  
PO Box 218  
Hamilton, MT 59840

Reference: Mountain View Orchards, Tract 22A (Carter)--Proposed minor (2 lots on 15.7 acres) subdivision--5 miles NE of Corvallis

Dear Mr. Marshall:

We have reviewed the proposed amended plat, topographic vicinity map, and aerial photo for this proposed subdivision, and our comments follow.

### Wildlife

This subdivision is located in the lower foothills that rise easterly towards the Sapphire Mountains. In addition to Birch Creek running through this subdivision, there are several nearby gulches, creeks and topographic features favored by wildlife as habitat and movement corridors, as well as nearby agricultural fields. Wildlife such as white-tailed deer, coyote, fox, and skunk are likely to be found in the area, as well as an occasional black bear or mountain lion, and numerous small mammal and bird species. There is a general possibility of human/wildlife conflicts at this location if residents do not pay attention to careful handling of garbage, pet control, etc. We recommend that a "living with wildlife" section be included as a development covenant for this subdivision in order to help future homeowners deal with and avoid potential wildlife issues. We have attached a copy of our recommendation.

### Riparian

1. Birch Creek flows east to west for about one thousand feet through the northern portion of proposed Tract 22A-1 of this subdivision. FWP has no fish data for this creek, and we do not know what fish species might be present. We did not do a site visit, but looking at the 2004 aerial photo, it appears that Birch Creek has been noticeably impacted by agricultural use (apparently, livestock grazing) at this location. In order to protect Birch Creek and its potential riparian area, we recommend establishing a minimum 25-foot

(preferably, 50-foot) "no build/alteration" setback from the high-water mark along *each* side of the creek. We also recommend that this "no build/alteration" buffer zone be clearly delineated and labeled as such on the plat. (We recognize that there currently exist non-residential buildings in the creek vicinity that may be closer than 25-50 feet, and we would agree that these could be "grand-fathered" in to this plat.)

2. We recommend requiring riparian covenants stipulating "no build/alteration" within Birch Creek and its buffer zone, except for noxious weed control. Encouraging the development of native vegetation (including shrubs and trees)--while *discouraging* actions such as planting lawns or crops and associated fertilizing, utilizing motorized stream crossings that do not meet Montana Stream Protection Act "310" permit standards, mowing or cutting or clearing vegetation, and extensive livestock grazing--would help preserve the water quality and functionality of this natural stream, protect and enhance the riparian areas, and protect property from eroding banks and possible flooding. Enclosed is our recommended version of riparian covenants for Birch Creek and its buffer zone at this location.

We thank you for providing the opportunity for FWP to comment on this subdivision.

Sincerely,

/s/ Mack Long

Mack Long  
Regional Supervisor

ML/sr

C: Ravalli County Planning Department, Attn: Renee Van Hoven, 215 S. 4 St., Ste. F, Hamilton, MT 59840

Development Covenants for Mountain View Orchards, Tract 22A (Carter) subdivision, recommended by Montana Fish, Wildlife & Park; Missoula; January 8, 2007

## Section \_\_: Living with Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov).

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting wildlife such as bear and raccoon. It is best to not set garbage cans out until the morning of garbage pickup and to bring them in no later than that same evening.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. **Birdseed** is an attractant to bears. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or

- points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
  - g. **Pet food and/or livestock feed** should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets and/or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
  - h. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
  - i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
  - j. **Compost piles** can attract skunks and bears. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps.
  - k. **Apiaries (bee hives)** could attract bears in this area and [should be avoided/are not allowed] in this subdivision. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
  - l. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

## Section \_\_: Riparian use guidelines

Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. The goal of the "no build/alteration zone" along Birch Creek is to help preserve the water quality and functionality of this natural stream, protect and enhance the riparian areas, and protect property from eroding banks and possible flooding.

On each side of Birch Creek is a 25-foot [50-foot?] "no-build/alteration" setback (zone) from the high-water mark, hereafter referred to as the "buffer zone." The following covenants (restrictions) apply to Birch Creek and its buffer zone, and are designed to guide use of the creek and buffer zone:

- a. No new building or alteration is allowed in the zone.
- b. Only non-motorized access and use of the buffer zone is allowed (except for certain maintenance needs such as weed spraying).
- c. Do not cut or remove live or dead vegetation, particularly shrubs and trees from the buffer zone. Wood (i.e., fallen branches, downed trees) is an important part of fish habitat and contributes significantly to overall stream health. Wood regularly causes bed scour that creates pools where fish reside to feed and seek cover. Wood also stores sediment that is used for spawning. Dead trees also function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
- d. Do not plant lawns or crops in the buffer zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
- e. If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
- f. In general, keep livestock out of Birch Creek and do not include the creek in corrals. In the riparian buffer zone, manage grazing intensity, vary season and length of use, and allow rest for the area in order to encourage riparian plant growth and stream protection. Alternatively, develop off-stream watering facilities (e.g., water troughs) for livestock, and use fences to keep livestock from trampling and grazing riparian vegetation in the buffer zone.
- g. Development of off-channel watering facilities cannot include water from Birch Creek if the lot(s) does not have valid water rights to the stream. If no water rights exist for, or have not been transferred to the property, then water cannot be diverted from the creek for any use. Residents should consult with the Montana Department of Natural Resources for questions on water rights.
- h. In summary, allow riparian areas--the creek and its buffer zone--to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.

- i. These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

## EXHIBIT A-2

### 3-1-5(a)(viii) Proposed Easements

There is a proposed 10-ft. Irrigation Sprinkler Line Easement along the south line of proposed Lot 22-A-1 as shown on the Preliminary Plat.

### 3-1-5(a)(xix) Estimated Pro-Rata Calculation

See Attachment prepared by David Ohnstadt. Note corrections for Birch Creek Loop to include easement acquisition (note at bottom is for initial comp). Final total estimate figure is \$15,657.

### 3-1-5(a)(xx) Permits

Not Applicable. No work is being proposed along Birch Creek.

### 3-1-5(a)(xxi & xxii) Legal & Physical Access

See attached Access Road Report

### 3-1-5(a)(xxiii) History of Tract

(see attachment)

### 3-1-5(a)(xxiv) Title Report

(see attachment)

### 3-1-5(a)(xxv) Covenants

(see attachment)

### 3-1-5(a)(xxvi) Water Rights

(see attachments)

Primary field irrigation is by sprinkler system, with water provided by the Bitterroot Irrigation District. Lot 22-A is allocated 10 I.A. B.R.I.D. has agreed to split these shares 9 I.A. for proposed Lot 22-A-1 and 1 I.A. for Lot 22-A-2.

Other rights for surface water and Birch Creek per attachments. These will not be shared or split.

### 3-1-5(a)(xxvii & xxviii) Mineral Rights

Not Applicable

### 3-1-5(a)(xl) Sensitive Species Report

See Attached copy of Montana Natural Heritage Program Report. No sensitive species are indicated within the boundaries of the proposed subdivision.

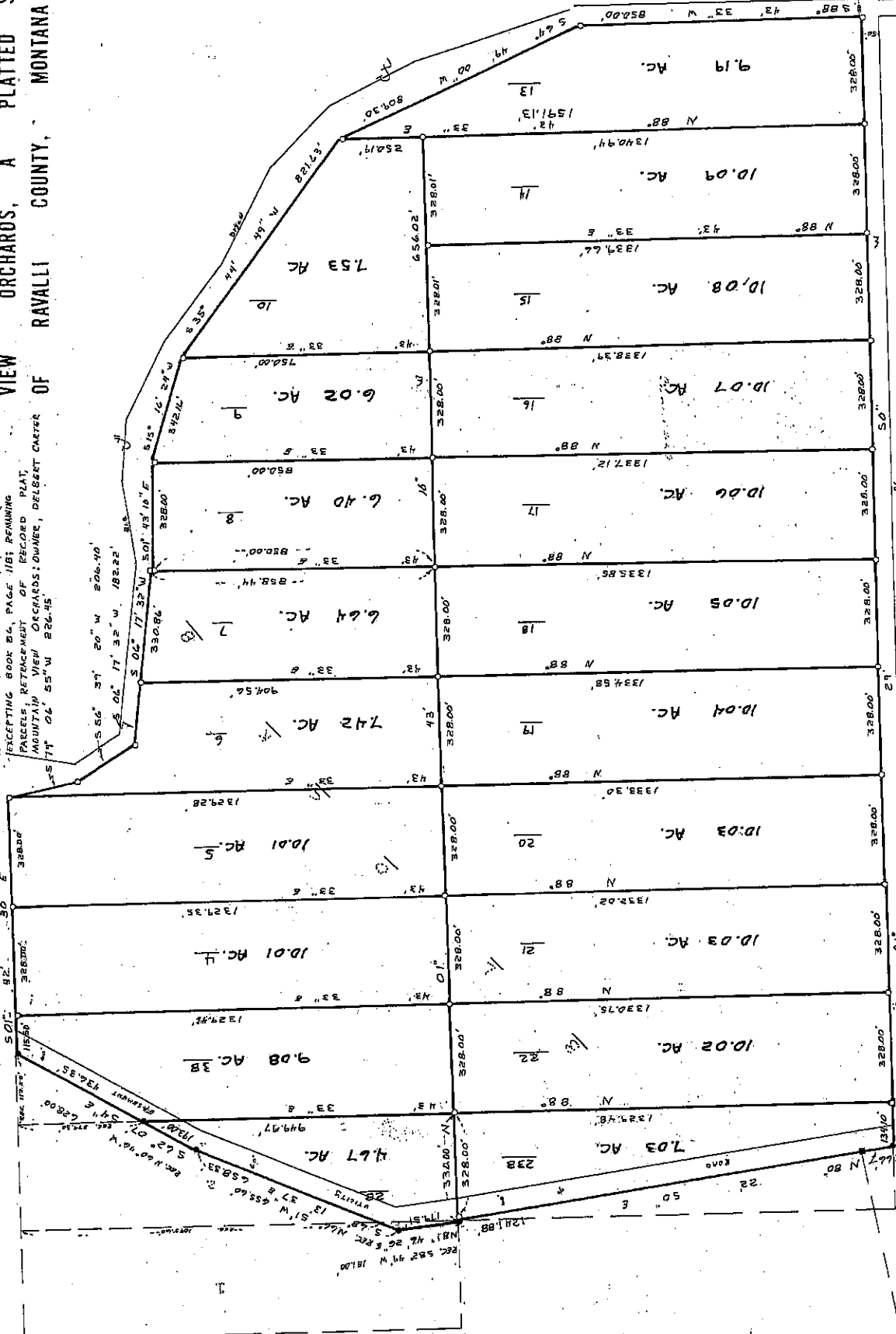
### 3-1-5(a)(xli) Road Maintenance Agreement

(see attachment)

CERTIFICATE OF SURVEY

A PORTION OF BLOCK 8, MOUNTAIN VIEW ORCHARDS, A PLATTED SUBDIVISION OF RAVALLI COUNTY, MONTANA

RETRACEMENT OF LOTS 1, 2, 3 & 23  
EXCEPTING BOOK 84, PAGE 118; REMAINING  
PARCELS RETRACEMENT OF RECORD PLAT  
MOUNTAIN VIEW ORCHARDS, OWNER, DELEET CARTER OF  
RAVALLI COUNTY, MONTANA



1/4	SEC.	T.	R.
	12	7N	20W
	13	7N	20W
	14	7N	20W
	15	7N	20W
	16	7N	20W
	17	7N	20W
	18	7N	20W
	19	7N	20W
	20	7N	20W
	21	7N	20W
	22	7N	20W
	23	7N	20W

238396  
CERTIFICATE OF  
SURVEY NO. 238396

RAVALLI COUNTY, MONTANA  
SHEET 1 OF 2



Asbury  
Survey  
Registered Land Surveyor  
Ravalli County, Montana  
Phone: 931-2547



2012  
Pg. 2 of 2

LEGAL DESCRIPTIONS

LEGAL DESCRIPTION PARCEL 2B

A tract of land located in and being a portion of Lots 1 and 2, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.07 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

Beginning at the southeast corner of said Lot 2, Block 8, said point being the true point of beginning; thence, S. 01° 43' 10" W., along the westerly boundary of said Lot 2, a distance of 330.00 feet; thence, S. 88° 45' 28" E., a distance of 178.51 feet; thence, S. 68° 13' 37" E., a distance of 698.33 feet; thence, S. 62° 07' 54" E., a distance of 193.00 feet to a point on the westerly boundary of said Lot 2; thence, S. 88° 43' 39" W., along the easterly boundary of said Lot 2, a distance of 949.97 feet to the true point of beginning, containing 4.87 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

Subject to a 60 foot wide road and utility easement along the entire westerly boundary of the above described parcel, as shown on Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION PARCEL 2B

A tract of land located in and being a portion of Lot 3, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, and being more particularly described as follows:

Beginning at the southeast corner of said Lot 3, Block 8, said point being the true point of beginning; thence, S. 88° 43' 39" W., along the westerly boundary of said Lot 3, a distance of 949.97 feet; thence, S. 62° 07' 54" E., a distance of 193.00 feet to a point on the easterly boundary of said Lot 3; thence, S. 01° 43' 10" W., along said easterly boundary of Lot 3, a distance of 115.90 feet to the southeast corner of said Lot 3; thence, S. 88° 43' 39" W., along the westerly boundary of said Lot 3, a distance of 139.41 feet to the southeast corner of said Lot 3; thence, S. 01° 43' 10" W., along the westerly boundary of said Lot 3, a distance of 338.00 feet to the true point of beginning, containing 9.08 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

Subject to a 60 foot wide road and utility easement along a portion of the northerly boundary of said parcel 3 B, as shown on Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 4

A tract of land described as being Lot 4, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 5

A tract of land described as being Lot 5, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 6

A tract of land described as being Lot 6, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 7

A tract of land described as being Lot 7, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 8

A tract of land described as being Lot 8, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 9

A tract of land described as being Lot 9, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 10

A tract of land described as being Lot 10, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 11

A tract of land described as being Lot 11, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1A

A tract of land described as being Lot 1A, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.09 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1B

A tract of land described as being Lot 1B, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.08 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1C

A tract of land described as being Lot 1C, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.07 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1D

A tract of land described as being Lot 1D, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.06 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1E

A tract of land described as being Lot 1E, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.05 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1F

A tract of land described as being Lot 1F, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.04 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1G

A tract of land described as being Lot 1G, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.03 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1H

A tract of land described as being Lot 1H, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.02 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1I

A tract of land described as being Lot 1I, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.01 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1J

A tract of land described as being Lot 1J, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, containing 10.00 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

LEGAL DESCRIPTION LOT 1K

A tract of land located in and being a portion of Lot 2, Block 8, Mountain View Orchards, a platted subdivision of Ravalli County, Montana, and being more particularly described as follows:

Beginning at the southeast corner of said Lot 2, Block 8, said point being the true point of beginning; thence, S. 88° 43' 39" W., along the westerly boundary of said Lot 2, a distance of 330.00 feet; thence, S. 62° 07' 54" E., a distance of 193.00 feet to a point on the westerly boundary of said Lot 2; thence, S. 88° 43' 39" W., along the easterly boundary of said Lot 2, a distance of 949.97 feet to the true point of beginning, containing 4.87 acres, and all according to Certificate of Survey No. \_\_\_\_\_.

Subject to a 60 foot wide road and utility easement along the entire westerly boundary of the above described parcel, as shown on Certificate of Survey No. \_\_\_\_\_.

CERTIFICATE OF SURVEY

I, the undersigned, being a duly qualified and sworn Surveyor, do hereby certify that the above is a true representation of a survey done by me or my assistants during the month of August, 1978, in accordance with the provisions of the Montana Surveying Act.

DENIS APPLEBURY, Registered Land Surveyor, Professional Land Planner, Woodslee, Montana, Phone-963-3267

1978 AUG 21, 10:00 AM, REGISTERED LAND SURVEYOR, DENIS APPLEBURY, RAVALLI COUNTY, MONTANA, No. 7083

1/4	SEC	T	R
1	36	37	50W
2	36	37	50W
3	36	37	50W
4	36	37	50W

Applebury  
Survey

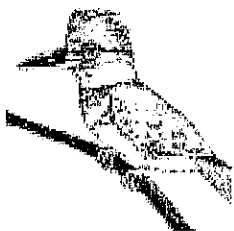
Denis Applebury  
Registered Land Surveyor  
Professional Land Planner  
Woodslee, Montana  
Phone-963-3267

CERTIFICATE OF  
SURVEY NO. 7083

RAVALLI COUNTY, MONTANA

SHEET 2 OF 2





RECEIVED

MAY 17 2007  
IC-07-05-628  
Ravalli County Planning Dept.

ALCYON, LLC

P.O. BOX 218  
HAMILTON, MT 59840  
406-381-1125

5/17/07

Jennifer De Groot  
Ravalli County Planning Department  
215 S. Fourth Street, Suite F  
Hamilton, MT 59840

Re: Amended Plat of Lot 22-A, Block 8, Mountain View Orchards  
Sufficiency Response #2

Dear Ms. De Groot:

The enclosed materials provide the additional items requested in your letter dated 3/22/07, specifically:

- Public Road accesses enumerated and shown
- Bridges listed and shown
- Soils Question 25 updated
- Question 26 updated
- The applicant will provide the contributions per Question 52
- Existing & proposed wells and wastewater systems shown
- No build/Alteration setbacks labeled and defined from ordinary high water line
- All property owners within 300 ft. of property were previously shown
- Elk Ranges not applicable per John Vore, FWP, as discussed via email
- Mineral Rights form included
- Soils report updated for farmlands

Regarding the pole barn (shed), a portion of which is within the 60 ft. easement shown for Birch Creek Loop Road, I present the following:

1. Mr. Carter purchased the property in 1968 (deed attached), and has testified to me the structure existed at that time.
2. At the time of the purchase, any use of Birch Creek Loop Road was at best prescriptive; the road was without benefit of written or surveyed easement, and without specific easement width.
3. The first instrument showing a 60 ft. easement for the road along the north line of the property was CS 2012 (recorded in 1979), which was nothing more than a retracement of Mr. Carter's property. I would argue that a retracement survey cannot create an easement by itself. (If a parcel is subsequently sold with reference to the survey on which the easement is shown and reserved in the accompanying legal description, the easement would then probably be created; this is not the case here, since Mr. Carter retained the subject parcel.)
4. The formal 60 ft. easement probably comes into being in 1999 with the recording of AP 1007, a lot line adjustment, being an instrument properly signed and executed by the owner.

5. The easement has never been stated as being exclusive. Moreover, Mr. Carter should in no way be penalized for his generosity in platting the 60 ft. easement.

We will await the change in regulation expunging the requirement for proof of continuous "County Road" access. Please call me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "George Marshall". The signature is written in dark ink and is positioned above the printed name.

George Marshall, PLS

# EXHIBIT A-4

RECEIVED  
MAR 8 2004  
LC CA-CB 361

## CORVALLIS RURAL FIRE DISTRICT IMPACT FEES

The Corvallis Rural Fire District has established the following requirements for new proposed subdivisions within its district. The requirements were established with consideration for life, safety of the residents of the district, as well as the Volunteers who are called upon to protect the district, and to mitigate harm to the public health and environment.

When establishing the requirements, emphasis was given to the Uniform Fire Code, Articles 9 and 10, and Appendix III-A, the Ravalli County Subdivision Regulations, the Ravalli County Road Department standards, and the 1993 Fire Protection Guidelines for Wildland Residential Interface Development. These Publications and Articles establish rules for dealing with fire apparatus access roads, fire department access to buildings, water supplies for fire protection, installation and maintenance of fire protection systems, and clearance of brush and vegetative growth from roadways.

Consideration was also given to Section 23.7.105 Administrative Rules of Montana, which is adopted pursuant to authority of 50-3-102 (2) and 50-3-103, MCA, which incorporates by reference the UFC (Uniform Fire Code) and establishes a minimum fire prevention code for Montana.

Every effort has been made to use words and phrases consistent with their definitions in the above mentioned publications.

Development Name: A.P. Lot 1, Blk 9, Sunnyside Orchards #3 (3rd Submittal)

Number of Lots: 3

Developer(s) Name: ?

The Fire Department requires that all roads and bridges meet or exceed, and are maintained to, the requirements of the Uniform Fire Code (UFC) Section 902, which reads in part:

902.2.1 Required Access: Fire apparatus shall be provided in accordance with Sections 901 and 902.2 for every facility, building, or portion of a building hereafter constructed or moved into or within the jurisdiction when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet (45,720 mm) from fire apparatus access, as measured by an approved route around the exterior of the building or facility...

**EXCEPTIONS:** When buildings are completely protected with an approved automatic sprinkler system, the provisions of Sections 902.2.1 and 902.2.2 may be modified by the Chief.

**902.2.2.1 Dimensions.** Fire apparatus access roads shall have an unobstructed width of no less than 20 feet (6096 mm) and an unobstructed vertical clearance of no less than 13 feet 6 inches (4115 mm).

**902.2.2.2 Surface.** Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus, and shall be provided with a surface to provide all-weather driving capabilities.

**902.2.2.6 Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the Chief. {The Chief accepts the Resolution approved by the Board of County Commissioners of Ravalli County. The Resolution sets the maximum acceptable road grade by the County for dedication and maintenance at six percent (6%).}

While not all parts of the UFC Section 902 are listed above, it is the responsibility of the Subdivision Developer to construct and maintain all fire apparatus access roads to comply with all aspects of the UFC and Ravalli County Standards.

#### **SPECIFIC REQUIREMENTS:**

The Fire District requires that all lots (premises) meet the requirements of UFC 901.4.4 as soon as construction begins with a temporary or permanent address posted at the premises driveway and upon occupancy with a permanent address posted in accordance with the above UFC. It appears that the access to all lots will be adequate if built as submitted.

#### **WATER SUPPLY REQUIREMENTS:**

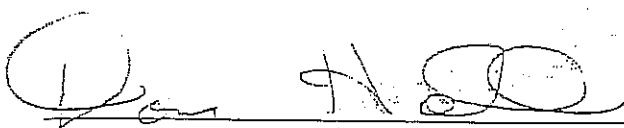
The water supply required by the Uniform Fire Code for one or two family dwellings, not exceeding 3600 square feet, requires a flow rate of 1000 g.p.m. The code does not specify the duration of flow for one and two family dwellings; however, the Fire Protection Guidelines for Wildland Residential Interface Development and the Ravalli County Subdivision Regulations list the minimum water supply of 2500 gallons per lot.

The Corvallis Rural Fire District currently has an ISO Class 5 Residential rating which requires a water flow of 200 gallons per minute for a duration of 20 minutes, or a total flow of 4000 gallons per residence.

Considering the above information, the Fire District will accept a water supply of 1000 gallons per minute or 2500 gallons per lot of stored water. The water supply installation, up-keep and maintenance will be the responsibility of the Subdivision.

The Fire District realizes the financial burden of installing and maintaining a water supply and/or storage tanks capable of providing the required water flows, and is willing to accept a payment of \$500.00 (Five Hundred Dollars) per lot, in lieu of the water supply required by the UFC. The payment per lot must be paid upon approval of the Subdivision. The Fire District will then, upon its elective, purchase fire fighting apparatus or develop water supplies.

**EXCEPTIONS:** When buildings are completely protected with an automatic sprinkler system approved by the Chief, the above listed water supply may be reduced by 50%. The Subdivision Covenants must state that "All residences constructed within the Subdivision be completely protected with an approved automatic sprinkler system." The Fire District will provide a \$250.00 reimbursement to those residences with an approved automatic sprinkler system.

  
Chairperson

  
Date

# Corvallis School District #1

P.O. Box 700 / 1045 Main  
Corvallis, MT 59828

Phone: (406) 961-4211 Fax: (406) 961-5144

RECEIVED  
FEB 06 2007  
IL-07-02-139  
Ravalli County Planning Dept

**Daniel B. Sybrant**  
Superintendent  
961-4211

**Trevor Laboski**  
Principal  
High School  
961-3201

**Jason Wirt**  
Assistant Principal  
High School  
961-3201

**Tom A. Miller**  
Principal  
Middle School  
961-3007

**Rich Durgin**  
Assistant Principal  
Middle School  
961-3007

**Janice Stranahan**  
Principal  
Primary School  
961-3261

**Virginia Haines**  
Special Services  
Director  
961-3201

**Russ Hendrickson**  
Technology  
Coordinator  
961-3201

**Vannesa Bargfrede**  
Business Manager  
District Clerk  
961-4211

February 2, 2007

## EXHIBIT A-5

Ravalli County Planning Office  
215 South 4<sup>th</sup> Street  
Suite F  
Hamilton Mt 59840

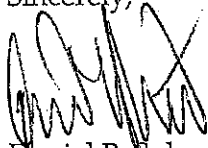
Dear Planning Department,

I have reviewed your letter in regards to the proposed minor subdivision. The minor subdivision is for a 2 lot subdivision off of Mountain View Orchards, Block 8, Tract 22A, AP in Ravalli County.

We have no specific objection to this subdivision. As we have stated before, growth in student numbers continues to affect our district infrastructure and bussing system.

In general, we ask that appropriate student safety measures be considered when designing this subdivision. We also ask that you consider a reasonable per lot donation to the school district to help mitigate the impact on our school.

Sincerely,



Daniel B. Sybrant

dbs/lh



## EXHIBIT A-6

Memo to: Ravalli County Commissioners  
From: Ravalli County Health Board  
Re: Proposed new County road regulations  
Date: April 4, 2005

Various research studies show a strong link between air borne dust particulates and human health problems, including emphysema, asthma and others. For further details, please see the article (and 72 referenced articles) from the American Academy of Pediatrics, 2004, "Ambient Air Pollution: Health Hazards to Children."

In Ravalli County, even though there is limited air monitoring we are able to do, it is clear that sometimes we have excessive particulate matter (mainly road dust) in our air. Additionally, citizens often complain to County and State agencies about specific road dust problems in certain areas.

Because of this, the Health Board strongly urges the Commissioners to include mandatory dust control measures in any road regulations for the County.

All new roads, including those in subdivisions, should be paved, or treated with dust suppressant such as magnesium chloride, at the time of construction. If the magnesium chloride option is chosen, which requires reapplication every other year, owners must provide sufficient bonding or financial guarantee to insure that the work will be done for an extended period such as 20 or 30 years.

For existing roads owned by the County, we recommend that the very first budget priority be to apply dust palliative on all roads. This means that ALL County roads should have a graded magnesium chloride surface before any road is given additional budget allocation for widening, paving etc.

We believe that these measures, if implemented, will significantly help the health condition of all citizens of Ravalli County.

Thank you for considering and including these provisions in the new road regulations.

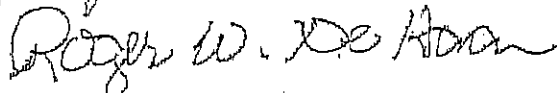
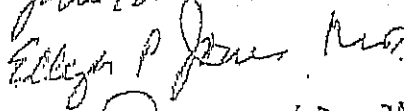

Respectfully submitted by the Ravalli County Health Board:

Mr. Greg Chilcott, Ravalli County Commissioner

Dr. John Swanson, M.D.

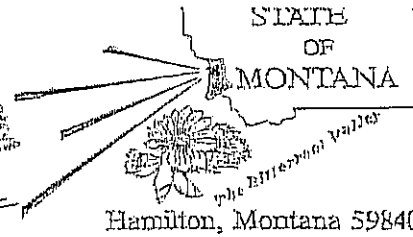
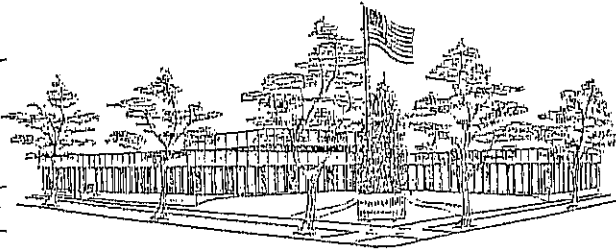
Dr. Elyn Jones, M.D.

Mr. Roger W. De Haan, P.E.



# EXHIBIT A-7

COUNTY  
OF  
RAVALLI



IC-04-06-876

RAVALLI CO. Planning Office

RAVALLI COUNTY BOARD OF HEALTH  
215 S. 4<sup>th</sup> Street, Suite A  
Hamilton, MT. 59840

RECEIVED  
JUN 23 2004

June 23, 2004

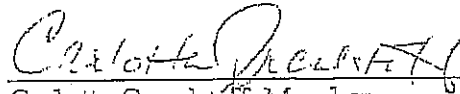
Road Standards Committee  
C/O Ravalli County Planning Department

RE: Board of Health's Concerns for Road Standards

The Board of Health met in regular session on this date of June 23, 2004. In a discussion of air quality and roads, the Board of Health unanimously agreed that air quality and road safety are of paramount concern in the development of any road standards.

For the Board of Health:

  
Roger DeHaan, Member

  
Carlotta Grandstaff, Member

  
Commissioner Greg Chilcott, Chairman

**SUBDIVISION APPLICATION PACKET CHECKLIST - Water and Sanitation** Information Per MCA 76-3-622

Name of Subdivision: *Tract 22A, Block 8, Mountain View Orchards*

Subdivider/Landowner Name(s): *Delbert Carter*

Consultant Name: *RAM ENGINEERING*

NOV 06 2006

Date Received:

Sufficiency Review Due Date:

RAVALLI COUNTY  
ENVIRONMENTAL HEALTH

Yes	No	N/A	Item	Additional Information/Staff comments
(1) Unless the land division is excluded from review under 76-4-125(2), the subdivider shall submit to the information listed below for proposed subdivisions that will include new water supply or wastewater facilities.				
			Provide two copies of the following information with a check paid to RCEHD for their \$50.00 sufficiency review fee.	
			(a) Vicinity Map or Plan	
✓			(i) The location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:	
		✓	(A) flood plains	
✓			(B) surface water features	
		✓	(C) springs	
✓			(D) irrigation ditches	
✓			(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems	
✓			(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g);	
✓			(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d)	
		✓	(ii) The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities	
✓			(b) A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by DEQ.	
✓			(c) A drawing of the conceptual lot layout at a scale no smaller than 1" = 200' that shows all information required for a lot layout document in rules adopted by the DEQ pursuant to 76-4-104.	

**EXHIBIT A-8**

DEC 13 2006  
IC-06-12-1901  
Ravalli County Planning Dept.

Yes	No	N/A	Item	Additional Information/Staff comments
✓			(d) Evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:	
✓			(i) A soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by DEQ.	
✓			(ii) Demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer.	
		✓	(iii) In cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);	
			(e) For new water supply systems, unless cisterns are proposed, evidence of adequate water availability:	
✓			(i) obtained from well logs or testing of onsite or nearby wells;	
✓			(ii) obtained from information contained in published hydrogeological reports; OR	
✓			(iii) as otherwise specified by rules adopted by DEQ pursuant to 76-4-104;	
✓			(f) Evidence of sufficient water quality in accordance with rules adopted by DEQ pursuant to 76-4-104;	
✓			(g) A preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality.	The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

*Morgan J. Smith*

**EXHIBIT A-9****Jennifer Degroot**

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**From:** David Ohnstad  
**Sent:** Thursday, March 15, 2007 11:35 AM  
**To:** Jennifer Degroot  
**Cc:** 'Alcyon, LLC'; Renee Van Hoven  
**Subject:** RE: mountain view orchards block eight variance request

Jennifer -

The Road & Bridge Department will not oppose the approval of this variance. Birch Creek Loop, the county-operated roadway this one-unit would access to is currently aggregate surfaced. Requiring the paving of the private roadway leading to the county's gravel roadway may not be considered reasonable or necessarily beneficial.

Apologies again for the confusion.

David

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**From:** David Ohnstad  
**Sent:** Wednesday, March 14, 2007 8:16 AM  
**To:** Jennifer Degroot  
**Cc:** 'Alcyon, LLC'; Renee Van Hoven  
**Subject:** FW: mountain view orchards block eight variance request

Jennifer -

Perhaps I was having a "Wisconsin Moment" (Renee can explain what that is) when I forwarded the following. I had discussed this issue with George Marshall a while ago and had forgotten about it. George is scheduled to meet with me tomorrow morning to refresh my recollection - I may forward an amended recommendation at that time.

Apologies for the confusion.

David

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**From:** David Ohnstad  
**Sent:** Thursday, February 22, 2007 10:26 AM  
**To:** Jennifer Degroot  
**Subject:** mountain view orchards block eight variance request

Jennifer -

We have received an "agency comment" request for a proposed two unit subdivision off Haywire Lane. The applicant is requesting a variance from the requirement to improve the privately operated roadway leading to the subdivision. The Road & Bridge Department strongly opposes the approval of this variance.

We find that 1) granting this variance **will have a detrimental effect** on public health, safety and welfare - air quality is already impacted and any further development on un-paved roadways will only increase that problem, 2) the conditions on which the request is based **are not unique to this property**, 3) physical conditions **do not prevent** the applicant from meeting the regulations, and 4) **there will be an increase in public costs if the variance is approved** - the cost of meeting air quality standards will fall to property owners throughout the county.

7/2/2007

David

7/2/2007